



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 10/07/04.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JAMES HIGHTOWER,)	
)	
)	
Complainant,)	
)	Charge No.: 2002CH0290
and)	EEOC No.: N/A
)	ALS No.: 11823
ZALE HOMES, a/k/a ZALE GROUP,)	
a/k/a G.A.Z, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On July 10, 2002, Complainant, James Hightower, filed a complaint on his own behalf against Respondent, Zale Homes, a/k/a Zale Group, a/k/a G.A.Z., Inc. That complaint alleged that Respondent discriminated against Complainant on the basis of his race when it refused to supply him with information on townhomes being built and when it filed a false police report against him.

This matter now comes on to be heard on Respondent's Motion to Dismiss. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The Illinois Department of Human Rights (IDHR) was invited to file a brief to explain its position in this matter, but IDHR declined that invitation. The matter is ready for decision

FINDINGS OF FACT

The following findings of fact were derived from the record file in this matter.

1. On or about July 6, 2001, Complainant filed his initial charge of discrimination with the Illinois Department of Human Rights (IDHR).

2. Complainant filed a complaint in this forum after the IDHR failed to act upon his charge within 365 days.

3. There is no evidence in the record file to indicate that IDHR has ever issued a determination on the merits of Complainant's claims.

4. In an order entered on February 18, 2003, IDHR was given leave to file a brief on this matter within 30 days. IDHR did not file such a brief and the time for filing has passed.

CONCLUSIONS OF LAW

1. Complainant's claims in this matter are based upon Article 3 of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Article 7B of the Act covers procedures to be followed regarding charges filed under Article 3 of the Act.

3. Article 7B of the Act does not contain a provision for complainants to file their own complaints with the Human Rights Commission.

4. The Human Rights Commission has no authority to consider the existing complaint in this matter.

5. This matter should be remanded to IDHR for its determination on the merits of Complainant's claims.

DISCUSSION

Complainant filed a charge of discrimination with the Illinois Department of Human Rights (IDHR) on or about July 6, 2001. He filed a complaint in this forum after the IDHR failed to act upon his charge within 365 days.

The charge and complaint both allege discrimination regarding the sale of townhomes built by Respondent. As such, they are based upon the provisions of Article 3 of the Human Rights Act.

Article 7B of the Act sets forth the procedures to be followed by IDHR when processing charges based upon Article 3 of the Act. Article 7B does not contain a provision to allow complainants to file their own complaints before the Human Rights Commission. In the absence of such a provision, the Commission does not have the authority to entertain the complaint in this case.

In his response to Respondent's motion, Complainant concedes that his claims are based upon Article 3 of the Act. However, he argues that when Respondent called the police and filed a false police report, it violated the provisions of section 1-102(E) of the Act.

Section 1-102 explains the purpose behind the Human Rights Act. It is a statement of public policy by the General Assembly.

Section 1-102 does not define actionable civil rights violations. Such violations are defined exclusively in Articles 2 through 6 of the Act.

Despite the clear wording of the Act, Complainant urges the Commission to rule that violations of section 1-102 are civil rights violations. Such a ruling would be improper. The Human Rights Commission is an administrative agency. An administrative agency derives its powers from the legislation creating it, and it has no powers beyond those granted by that legislation. ***Robinson v. Human Rights Commission***, 201 Ill. App. 3d 722, 559 N.E.2d 229 (1st Dist. 1990). Thus, the Commission only has authority to address civil rights violations explicitly defined by the Act. As a result, there is no authority to entertain Complainant's claims at this time.

That does not mean that Complainant's claims cannot go forward. There is no indication in the record that IDHR has ever taken a position on the merits of his claims. Therefore, although the existing complaint must be dismissed, the matter should be remanded to IDHR for further proceedings. The department can then determine whether it is appropriate to file a complaint in this forum.

RECOMMENDATION

Based upon the foregoing, it is clear that the Human Rights Commission does not have authority to act on the complaint filed by Complainant. Accordingly, this matter should be remanded to the

Illinois Department of Human Rights for its determination on the merits of Complainant's claims.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 12, 2003